

Internal Revenue Service
District Director

Department of the Treasury

Post Office Box 1680, GPO
Brooklyn, NY 11202

Date: SEP 4 1996

Person to Contact:

Contact Telephone Number:

Refer Reply to:

EO: 7321

Employer Identification
Number:

CERTIFIED MAIL

Dear Applicant:

We have considered your application for tax-exempt status under section 501(c)(3) of the Internal Revenue Code.

The evidence presented disclosed that you were incorporated on [REDACTED] under section 402 of the Not-for-Profit Corporation Laws of the State of [REDACTED].

The purpose for which the corporation is formed are as follows:

"To provide support, guidance and economic aid by way of gifts, grants and/ or interest-free loans to young couples who are childless and seek medical or other such assistance in order to have a family."

The information submitted with your application 1023 indicates that your primary activity consists of paying the doctor bills for couples seeking fertility treatment services. Due to the high expenses and no insurance coverage for infertility, the organization provides funding and pays expenses for those who can not cover the expenses themselves. Recipients are selected on the basis of personal recommendations, no formal application is used for your selection process at this time.

Subsequent information submitted in response to our letter dated [REDACTED] reveals that "initial funds came from loans guaranteed by the founders in the expectation that they would be repaid out of fundraising receipt". However you misclassified these amounts as Contributions/Gifts on your financial statement. Also, these loans were not reflected on your balance sheet.

Section 501(c)(3) of the Code provides, in part, for the exemption from Federal income tax of organizations organized and operated exclusively for charitable, religious, scientific or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

In order to qualify under IRC 501(c)(3), an organization must be both "organized" and "operated" exclusively for one or more purposes specified in that section. If the organization fails to meet either the organizational test or the operational test, it is not exempt. (Regs. 1.501(c)(3)-1(a)(1)). The organizational test relates to the rules for governing an organization and the purposes stated in its articles of organization. The operational test relates to the organization's activities.

Section 1.501(c)(3)-1(c)(1) of the Regulations states that if more than an insubstantial part of an organization's activities is not in furtherance of exempt purposes, the organization will not be regarded as exempt.

In Better Business Bureau v. U.S., 326 U.S. 279 (1945), the Supreme Court stated that the presence of even a single, non-exempt purpose, if more than insubstantial in nature, will defeat exemption under Section 501(c)(3) of the Code, regardless of the manner or importance of the truly exempt purposes.

Section 1.501(c)(3)-1(d)(1)(ii) of the Regulations provides, in part, that an organization is not organized or operated exclusively for one or more of the purposes mentioned in section 501(c)(3) of the Code unless it serves a public rather than a private interest. An organization may not be exempt if it is operated for the benefit of private individuals.

Revenue Ruling 74-595 states, in part, that an organization formed for the purpose of providing free counseling to men concerning methods of sterilization qualifies under section 501(c)(3). However, no effort is made to provide funds to persons to assist them in obtaining these operations.

Revenue Ruling 73-569 states, in part, that an organization formed to provide free counseling to women on methods of abortion or placing the child up for adoption qualifies under section 501(c)(3) since the organization does not provide financial assistance to the women.

Revenue Ruling 67-367 C.B. 1967-2 Pg. 188 held that an organization whose sole activity is the operation of a scholarship plan for making payments to pre-selected, specifically named individuals does not qualify for exemption under section 501(c)(3) of the Code. The organization pays scholarships to pre-selected, specifically named individuals designated by members. Thus, the organization is serving private interests rather than public charitable and educational interests contemplated under section 501(c)(3) of the Code.

Unlike the organizations described in Revenue Rulings 74-595 and Revenue Ruling 75-569, your organization provides and assists couples in obtaining infertility treatments by paying their medical expenses. In your response to our request for additional information, you stated that "infertility is not considered a sickness and is not covered by the insurance industry".

Like the organization described in Revenue Ruling 67-367, 1967-2 CB 188, your organization provides payments to/on behalf of preselected specifically named individuals chosen by members of your governing board. Thus, your organization is serving private interests rather than the general public which lacks the donative element necessary to establish your organization as charitable.

Therefore, we have determined that you are not operating exclusively for educational or charitable or other exempt purposes stated in section 501(c)(3) of the Code.

Accordingly, we conclude that you do not meet the requirements for exempt status under section 501(c)(3) of the Code and propose to deny your request for exemption under that section.

You are required to file a taxable return Form 1120 or 1041 with the District Director of Internal Revenue Service. Please send the return to the Internal Revenue Service, P.O. Box 1680, General Post Office, Brooklyn, NY 11202.

Contributions made to you are not deductible by the donors as charitable contributions as defined in section 170(c) of the Code.

If you do not agree with this determination, you may request a Conference with the Regional Director of Appeals by protesting in accordance with the enclosed instructions within 30 days.

Protests submitted which do not contain all the documentation stated in the instructions will be returned for completion.

If we do not hear from you within that time this determination will be considered final and the appropriate State Officials will be notified.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

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Sincerely yours,

[Redacted Signature]

District Director

Enclosure: Publication 892